



Rolla Huff
Chairman & Chief Executive Officer

August 8, 2008

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Barton
Ranking Member, Committee on Energy
and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Edward J. Markey
Chairman, Subcommittee on Telecommunications
and the Internet
316 Ford House Office Building
Washington, DC 20515

The Honorable Cliff Stearns
Ranking Member, Subcommittee on Telecommunications
and the Internet
2370 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Dingell, Ranking Member Barton, Chairman Markey, and Ranking
Member Stearns:

EarthLink hereby respectfully responds to your letter of August 1, 2008,
concerning the tailoring of Internet advertising based upon consumers' Internet search,
surfing, or other use. EarthLink is committed to complying with all applicable consumer
privacy laws as well as the terms of our Privacy Policy, which is available at
<http://www.earthlink.net/about/policies/index.faces>. We continue to review our
consumer privacy policies and practices to insure that we remain consistent with the high



expectations that our subscribers and users have about their privacy. We welcome the opportunity to provide information about EarthLink to the Committee.

We set forth below our responses to the Committee's specific questions. In general, however, we are aware that the Committee has expressed interest in learning more about so-called "behaviorally targeted advertising" – i.e., the process of an Internet Service Provider ("ISP") using a consumer's Internet browsing history in order to tailor and subsequently deliver advertising based on this information. EarthLink has monitored developments in the industry and the related privacy questions that have arisen concerning such tailoring of advertising, but EarthLink has not deployed any such program at this time.

We describe below the other types of Internet advertising EarthLink provides in which a user's keying of a search term or a URL results in a targeted graphical advertisement or "sponsored result" search listing being offered. EarthLink's Internet advertising practices are consistent with common industry standards related to delivering advertisements to subscribers without compromising their privacy expectations.

1. Has your company at any time tailored, or facilitated the tailoring of, Internet advertising based on consumers' Internet search, surfing, or other use?

EarthLink does not tailor or facilitate the tailoring of Internet advertising based on consumers' Internet surfing or other use.

EarthLink does provide targeted advertising in the instances described below:

- Portal Keyword Search. EarthLink offers targeted graphical display advertising based on search terms keyed by users of the Google search tool residing within the EarthLink consumer portal (<http://my.earthlink.net>).
- Portal & Toolbar Search. EarthLink provides lists of "sponsored results" links to websites based on search terms entered by users of the same portal and from the downloadable EarthLink toolbar.
- Domain Name System ("DNS") Errors. EarthLink provides "sponsored results" listings from Yahoo on a resulting webpage after a subscriber enters the URL of a website that does not exist (e.g., <http://www.cnn.cop>).



- Graphical Advertising. EarthLink has contractual relationships with Internet advertising technology partners, such as DoubleClick and Tacoda, pursuant to which the advertiser displays advertisements on EarthLink-owned websites.

Significantly, the “targeted” Internet advertising programs described above are based either on the specific search term or website domain that the user enters in that session. EarthLink’s targeted advertising programs are not based upon any current or historical Internet surfing, historical search query submissions or other related actions taken by the user.

2. Please describe the nature and extent of any such practice and if such practice had any limitations with respect to health, financial, or other sensitive personal data, and how such limitations were developed and implemented.

Portal Keyword Search. EarthLink targets some graphical display advertisements in connection with keyword user searches conducted on EarthLink’s portal. Specifically, EarthLink offers to users of <http://my.earthlink.net> the ability to search the Internet for websites based on specific search terms. This searching capability is provided to EarthLink via a commercial relationship with Google. When a user enters a search term on the EarthLink portal page, EarthLink displays an advertisement that is related to the search term entered. In conjunction with this program EarthLink sells literal matches to literal search terms that have been purchased by advertisers. When these terms are searched, a banner advertisement is provided on the search results page.

For example, if a subscriber enters the term “flowers” into the search box on the EarthLink portal, a banner advertisement for a flower shop may be returned some or all of the time, depending on the contractual relationship between EarthLink and the advertiser. The selection of the banner advertisement that is displayed is based simply upon the existence of a match between the current search term entered by the user and a search term for which an advertiser has agreed to pay EarthLink. The banner advertisement that is displayed is not based upon any current or historical consumer Internet surfing or other uses or any other historical search queries.

Portal & Toolbar Search. EarthLink also has a relationship with Google for general search functionality. When a user searches the Internet using the Google search functionality on the EarthLink toolbar or within the EarthLink portal the search return will include “sponsored links” that are related to the search term. The sponsored links are segregated from the search return information and are labeled “sponsored links.” As with the display advertisements on the EarthLink portal described above,



the sponsored links that Google displays to an EarthLink user are not based upon any current or historical consumer Internet surfing or other uses or any other historical search queries, but instead are based upon the existence of a match between the current search term entered by the user and the search term for which an advertiser has agreed to pay Google.

DNS Errors. Rather than display a nondescript error page with no relevant information, when subscribers enter the URL of a website that does not exist, (e.g. <http://www.cnn.cop>) EarthLink, via a commercial relationship with vendors BareFruit and Yahoo, may display a page that lists potentially similar website domains. As with the “sponsored results” described above, these domains that are listed are not based upon consumer Internet surfing or other uses or any historical entry of URLs, but instead are based upon a match between the non-existent URL entered by the user and related URLs which may include advertisers contracting with Yahoo.

Graphical Advertising. Finally, EarthLink displays Internet advertising on EarthLink-owned websites through a contractual relationship with advertising technology partners, such as DoubleClick and Tacoda. These vendors enable EarthLink to quantify the traffic visiting a particular advertisement (i.e. number of unique visitors) and limit the number of times an advertisement is displayed for the same subscriber.

EarthLink’s practices described above are not granulated to exclude information concerning on health, financial, or other sensitive subjects that may be associated with the search term.

- 3. In what communities, if any, has your company engaged in such practice, how were those communities chosen, and during what time periods was such practice used in each? If such practice was effectively implemented nationwide, please say so.**

As described above, EarthLink does not engage in the practice of tailoring Internet advertising based on consumers’ Internet surfing or other use. EarthLink’s practice of displaying targeted advertisements based on user Internet searches or keying of URLs as described above is not limited to any particular geographic or demographic community. EarthLink is a nationwide ISP, and the advertisement initiatives described in response #2 are provided nationwide.

- 4. How many consumers have been subject to such practice in each affected community, or nationwide?**



As described above, EarthLink does not engage in the practice of tailoring Internet advertising based on consumers' Internet surfing or other use. EarthLink's practice of displaying targeted advertisements for user searches or keying of URLs is limited to users of the EarthLink search portal or EarthLink toolbar to conduct Internet searches, EarthLink subscribers who type a non-existent website domain and visitors to EarthLink-owned websites. EarthLink currently has 3.3 million subscribers.

5. Has your company conducted a legal analysis of the applicability of consumer privacy laws to such practice? If so, please explain what that analysis concluded?

EarthLink continually reviews the legality of its advertising and consumer privacy practices. EarthLink believes that the practices that are described above are consistent with EarthLink's Privacy Policy and with all applicable consumer privacy laws.

6. How did your company notify consumers of such practice? Please provide a copy of the notification. If your company did not specifically or directly notify affected consumers, please explain why this was not done?

EarthLink's Privacy Policy provides a description of our data collection and disclosure policies. This Privacy Policy has been in effect in its current version since October 31, 2003, and is provided to new and existing customers through the Policies section of EarthLink's website: <http://www.earthlink.net/about/policies/index.faces>.

7. Please explain whether your company has asked consumers to "opt in" to the use of such practice or allowed consumers who objected to "opt out." If your company allowed consumers who objected to opt out, how did it notify consumers of their opportunity to opt out? If your company did not specifically or directly notify affected consumers of the opportunity to opt out, please explain why this was not done.

As described above, EarthLink does not engage in the practice of tailoring Internet advertising based on consumers' Internet surfing or other use and thus there is no such practice for which consumers could "opt-in" or "opt-out" of such a practice. EarthLink does provide an opt-out mechanism through its Privacy Policy for other marketing solicitations and DNS error pages. There is no applicable opt-out for the targeted advertisements returned in a Portal Keyword Search or a Portal & Toolbar



Search. As described above, EarthLink's delivery of targeted display advertisements or lists of "sponsored results" in those scenarios is completely consistent with consumer expectations and experiences of how standard search engines operate.

The Privacy Policy, which is presented to new customers and available to all customers on the EarthLink website, includes a link to EarthLink's opt-out website. EarthLink also provides instructions to users on how to change the DNS error functionality described above back to a default status at the "Support" section of the main EarthLink website: <http://kb.earthlink.net/case.asp?article=187117>.

8. How many consumers opted out of being subject to such practice?

As described above, EarthLink does not engage in the practice of tailoring Internet advertising based on consumers' Internet surfing or other use and thus there is no such practice for which consumers could "opt-in" or "opt-out." For DNS Error opt-out, a precise number of subscribers is not available because the opt-out is achieved through a manual change to the subscriber's computer software rather than an internal EarthLink system.

9. Did your company conduct a legal analysis of the adequacy of any opt-out notice and mechanism employed to allow consumers to effectuate this choice? If so, please explain what that analysis concluded.

EarthLink continually reviews the legality of its advertising and consumer privacy practices. EarthLink believes that the practices that are described above are consistent with EarthLink's Privacy Policy and with all applicable consumer privacy laws.

10. What is the status of consumer data collected as a result of such practice? Has it been destroyed or is it routinely destroyed?

As described above, EarthLink does not engage in the practice of tailoring Internet advertising based on consumers' Internet surfing or other use and thus there is no such consumer collected as a result of such practice. Any data collected as the result of the advertising practices described herein is cycled out of EarthLink's systems on a routine basis and is not actively correlated with consumer information.



11. Is it possible for your company to correlate data regarding consumer Internet use across a variety of services or applications you offer to tailor Internet advertising? Do you do so? If not, please indicate what steps you take to make sure such correlation does not happen. If you engage in such correlation, please provide answers to all the preceding questions with reference to such correlation. If your previous answers already do so, it is sufficient to simply cross-reference those answers.

It is technically possible for EarthLink to correlate data across a variety of services or applications regarding consumer Internet use in order to tailor Internet advertising. However, EarthLink is not currently involved in such activity and does not currently have the internal ability to perform such correlation.

EarthLink appreciates the opportunity to work with the Committee on this matter. If you have any questions concerning this response or EarthLink in general, please do not hesitate to contact me or Paul Kenefick at 202-223-9107. Thank you.

Sincerely,

Rolla P. Huff